

No. 8908-4Lab-76/32720.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the Management of M/s The General Rubber Company Private Limited, 14/4, N.I.T., Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 205 of 1974

between

SHRI PREM SAGAR, WORKMAN AND THE MANAGEMENT OF M/S THE GENERAL RUBBER
COMPANY PRIVATE LIMITED, 14/4 N.I.T., FARIDABAD

AWARD

By order No. ID/FD/74/39650, dated 21st December, 1974, the Governor of Haryana, referred the following dispute between the management of M/s The General Rubber Company Private Limited, 14/4, N.I.T., Faridabad, and its workman Shri Prem Sagar to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Prem Sagar was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged inconformity with the notice of demands served on the management that his retrenchment from service notified by the management,—*vide* notice dated 25th January, 1974 was illegal on account of the failure of the latter to pay him retrenchment compensation in accordance with the provisions of section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act).

The management pleaded that the reference was bad in law for want of service of notice of demands directly on them and its rejection by them before the matter was taken to the Conciliation Officer. On merits they stated that the workman left the job during the period of notice of retrenchment, dated 25th January, 1974 and that he declined to receive the retrenchment compensation on the ground that he should be paid one months wages in lieu of notice besides the retrenchment compensation. The workman controverted the plea of the management while denying that he declined to receive the retrenchment compensation,—*vide* rejoinder filed by him, with the result that the following issues were framed on pleas of the parties,—*vide* order, dated 10th October, 1975:—

- (1) Whether the workman raised a demand direct on the management and the latter rejected it before taking the matter to the Conciliation Officer ?
- (2) If not, whether the reference is bad in law ?
- (3) Whether the termination of services of Shri Prem Sagar was justified and in order ? If not, to what relief is he entitled ?

I have heard the authorised representative for the parties and decide the issues as under :—

Issue No. 1 :

The workman appeared as his own witness and deposed that he served a notice of demands, dated 13th August, 1974 copy Exhibit W-1 directly on the management and that on not hearing from them he sent a copy of that notice to the Conciliation Officer on 23rd August, 1974. He brought on record the acknowledgement receipt Ex. W-2 showing the receipt of the notice of demands by the management under their signatures, in support of his statement. He also brought on record a copy of the notice of demands Ex. W-3 showing the receipt of copy thereof by the Conciliation Officer on 23rd August, 1974. I see no reason to disbelieve his statement particularly when the same is corroborated by the documentary evidence and there is not the least rebuttal on record thereof, I accordingly relying on his statement hold and decide this issue in his favour.

Issue No. 2 :

In view of my findings on issue No. 1, the question of decision of this issue does not arise even otherwise it has already been held by me,—*vide* my order, dated 10th October, 1975 made in reference titled Shri S.C. Sethi *versus* M/s Kirlosker Oil Engine, Mathura Road, Faridabad that it was no longer necessary for the workman to

raise a demand directly on the management and for the latter to reject it before the matter was taken to the Conciliation Officer in order to constitute an industrial dispute. I thus decide this issue accordingly.

Issue No. 3 :

This is an important issue of facts in the case. The management admittedly served the workman with a notice of retrenchment, dated 25th January, 1974 copy Ex. M-1 with an intimation to him that his services would no longer be required after the expiry of one month therefrom. Whereas the management contended that the workman left his job on 2nd February, 1974 even before the expiry of the notice period and declined to accept the retrenchment compensation on 25th February, 1974 when he came to the factory for collection of his dues on the ground that the wages of the notice period had not been offered to him, the workman denied these allegations and gave out that he was not taken on duty by the management on 26th January, 1974 after they had served him with retrenchment notice, dated 25th January, 1974 Ex. M-1 and that they did not pay him retrenchment compensation. He deposed that he made a complaint to the Labour Inspector. He admitted that he remained employed from 2nd February, 1974 to 15th December, 1974 with some other concern.

The management examined Shri R.C. Ahuja their Manager who made an oral statement in support of their allegations. No explanation could be made by the management as to why could they not remit the retrenchment compensation by money order or cheque to the workman if he had failed to receive the same on 25th February, 1974. They admittedly did not send any letter to the workman informing him about his failure to receive the retrenchment compensation on 25th February, 1974 and showing their readiness to pay the same to him. The solitary uncorroborated statement of Shri R.C. Ahuja thus does not inspire much confidence, particularly when it was rebutted by the testimony of Shri Prem Sagar, workman himself. I thus in view of the aforesaid circumstances of the case place no reliance on the oral evidence of Shri R.C. Ahuja and fully believe the statement of Shri Prem Sagar workman that the management failed to offer him the retrenchment compensation. The contention of Shri S.L. Gupta authorised representative of the management that the workman having left his job on 2nd February, 1974 before the expiry of the period of notice of retrenchment, he shall be deemed to have abandoned his service and this was thus not a case of retrenchment of his service is found negative by the plea put forth by the management,—*vide* written statement filed by them and the evidence of Shri R.C. Ahuja. Even otherwise I do not rely on the evidence of Shri R.C. Ahuja that the workman abandoned his job on 2nd February, 1974. Taken from any angle the retrenchment of service of the workman is well proved to be illegal and he is entitled to reinstatement with continuity of service and back wages excepting for the period from 2nd February, 1974 to 15th December, 1974, when he was admittedly in the employment of another concern. I, therefore, decide this issue against the management. I hold accordingly and answer the reference while returning the award in these terms.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Dated 27th August, 1976.

No. 1006, dated 27th August, 1976

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9907-4Lab-76/32722.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Orient Steel and Cold Rolling Mill Limited, Mathura Road, Plot No. 5 (Near Y.M.C.A.), Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 190 of 1975

between

SHRI BALDEV RAJ, WORKMAN AND THE MANAGEMENT OF M/S ORIENT STEEL
AND COLD ROLLING MILL LIMITED, MATHURA ROAD, PLOT NO. 5 (NEAR
Y. M. C. A.), FARIDABAD

AWARD

By order No. ID/FD/903-A-75/74896, dated 29th December, 1975, the Governor of Haryana, referred the following dispute between the management of M/s. Orient Steel and Cold Rolling Mill

Ltd., Mithura Road, Plot No. 5 (Near Y. M. C. A.), Faridabad and its workman Shri Baldev Raj to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Baldev Raj was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

Shri Amar Singh authorised representative for the workman admitted,—*vide* his statement made by him before me on 14th September, 1976 the objections of the management, that the name and style of the management had not been stated by the workman in the notice of demands correctly and whereas their names and style was Orient Steel and Industries Ltd., he had stated their names and styles as M/s Orient Steel and Cold Rolling Mills Ltd., Shri Amar Singh further gave out that as a result of the mistake in respect of the names and styles of the management in the notice of demands their names and styles has been incorrectly noted down in the reference itself which could not be proceeded with a wrong name and style of the management and that the workman now wanted to get a fresh reference made and he did not intend to pursue the demand leading to this reference.

It would thus appear from the statement of Shri Amar Singh authorised representative for the workman, that the demand served by the workman on the management stands withdrawn as a result of the mistake made by him in the name and style of the management and there is now no dispute between the parties requiring adjudication.

I hold accordingly and answer the reference while returning the award in these terms.

MOHAN LAL JAIN,

Dated the 17th September, 1976.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1048, dated the 20th September, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Dated the 20th September, 1976.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9904-4Lab-76 32724. — In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. The Palwal Cooperative Marketing Society Ltd., Palwal.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 169 of 1973

between

SHRI SHIV CHARAN WORKMAN AND THE MANAGEMENT OF M/s. THE PALWAL CO-
OPERATIVE MARKETING SOCIETY LTD., PALWAL.

AWARD

By order No. 1D,FD/72,38525, dated the 11th September, 1973, the Governor of Haryana, referred the following dispute between the management of M/s. The Palwal Cooperative Marketing Society Ltd., Palwal and its workman Shri Shiv Charan to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Shiv Charan is justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them.

The workman in conformity with the notice of demands served by him on the management, alleged,—*vide* claim statement filed by him that his services as a Salesman on wages of Rs. 228 per mensem had been terminated illegally by the management,—*vide* their resolution, dated the 2nd September, 1972, received by him on 22nd September, 1972, without their holding any domestic enquiry after he was served with a charge-sheet-dated 20th May, 1972 and a show-cause notice, dated the 7th June, 1972 and he had filed his reply.

The management pleaded that the reference was bad in law for want of service on them of a notice of demands directly by the workman and its rejection by them before the workman took the matter to the Conciliation Officer. They stated that Shri Shiv Charan was not a workman within the definition of this term as given in section 2(s) of the Industrial Disputes Act and the demands raised by him had not been espoused by the other workman of the union and the dispute should have been taken to the arbitration of the competent authority under section 55 of the Punjab Cooperative Societies Act, 1961 and the reference was legally unmaintainable on these grounds as well.

On merits, the management while admitting the termination of the services of the workman with effect from 2nd September, 1972, on charges of misappropriation of their funds and misbehaviour of the workman, resisted the demand on the ground that an oral enquiry was held by the Board of Directors with full opportunity to the workman to defend himself and that the termination of his services was fully justified. They further averred that the workman had been gainfully employed at Palwal ever since his services were terminated.

The workman controverted the plea of the management and reiterated the allegations made by him in the claim statement,—*vide* rejoinder filed by him with the result that the following issues were framed on pleas of the parties,—*vide* order, dated 9th July, 1974, of my learned predecessor Shri O. P. Sharma :—

- (1) Whether Shri Shiv Charan, the present claimant, is not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947 ? (On management)
- (2) Whether the demand, the subject-matter of the present reference, was first raised on the management and rejected by it before taking up the matter for conciliation ? If not, with what effect ? (On workman)
- (3) Whether the order of reference is vague and bad in law for reasons given in preliminary objections Nos. 2 and 3 and 6 of the written statement ? (On management)
- (4) Whether the Engineering Mazdoor Union, Gurgaon, has no *locus standi* to represent the present claimant ? (On management)
- (5) Whether the termination of services of Shri Shiv Charan is justified and in order ? If not, to what relief is he entitled ?

I have heard the learned authorised representatives for the parties and seen the record and decide the issues as under :—

Issues Nos. 1 to 4—

There is no evidence worth the name on record for the management in support of any of the same and their authorised representative could not satisfy me in respect of the correctness of the pleas covered by these issues. Even otherwise the reference relates to the termination of an individual workman on a demand raised by him in his individual capacity and he had admittedly been discharging the duties of actual sale of Fertilizer, etc. of the management besides making entries in the account books. He is thus obviously a workman within the definition as given in section 2(s) of the Industrial Disputes Act. It could not be pointed to me as to how the reference was vague and bad in law. I have already held,—*vide* my order, dated 10th October, 1975, made in reference entitled Shri S. C. Sethi *versus* M/S. Kirlosker Oil Engine, Mathura Road, Faridabad, against the management on the plea covered by issue No. 2 and the reasons stated in that order may be taken as sufficient for rejection of this plea as untenable. I accordingly decide all these issues against the management.

Issue No. 5—

The workman was charged,—*vide* letter dated 20th May, 1972, Exhibit M. W. 3/2, as under :—

- (i) That he sold Urea Fertilizer weighing 40 K. G. for consideration of Rs. 40 in violation of the circular letter fixing its price at the rate of Rs. 36.16 and thus lowered the reputation of the society ;
- (ii) That he refunded the cash security of Rs. 930 of his brother Shri Nand Kishore against the resolution of the Board of Director, dated 15th February, 1972, and forged his signatures on a voucher dated 3rd March, 1972 ;

- (iii) That he misappropriated heavy amount of the society during the period from 1st July, 1970 to 3rd March, 1972 ;
- (iv) That he forged the signatures of Shri Mohan Lal Producer in Hindi script on a receipt showing payment of a sum of Rs. 670.56 to him of the produce purchased by the management ;
- (v) That he recorded a note in urdu script in his handwriting in the attendance register of the society that no T. A. shall be given to Shri B. D. Saini, Manager of the society who had gone on tour to Hodel on 16th February, 1972 and that this amounted to disobedience and disrespect to his superior officer and that he generally misbehaved with the customers and his superior officers.
- (vi) That he failed to pay the octroi of 75 bags of Sugar resulting in a loss of Rs. 157.50 to the society which it had to pay as penalty.
- (vii) That during the course of annual audit of the society for the year ending 30th June, 1971, the stock of Fertilizer in his custody was found in excess to that entered in the stock register.
- (viii) That during the annual audit made on 18th February, 1972, the stock of fertilizer Urea in his possession was found in excess to the extent of 30 bags each of 40 K. G. weight and that he removed the same from the Godown without the approval of the competent authority and misappropriated the cash proceeds thereof.
- (ix) That he handed over less stock of the value of Rs 274.70 to Shri Parlad Singh, Accountant of the society, at the time of his handing over charge of his duties to him on his suspension.
- (x) That he failed to enter a electric press in the stock register and hand over the same to Shri Parlad Singh.
- (xi) That he embazzled three bags of urea out of 225 bags received from the Narnaul Cooperative Marketing Society Ltd.
- (xii) That he cheated the society of 12 bags of urea Fertilizer by misappropriating the sale price thereof in addition to 30 bags referred to in charge No. 8.

The workman denied all the charges. He however admitted in reply to charge No. 1 that the price of Rs. 40 charged by him for one bag of Urea Fertilizer included the sales tax and that he had no dishonest intention while doing so. He admitted in reply to charges Nos. 7 and 8 that the Fertilizer Urea found in his possession during audit was in excess of the Urea entered in the stock register. He explained that the excess fertilizer urea belonged to Bhagat Raj Bati and Shri Shankar Singh members of Co-operative Society, Solra, who did not lift the same from the godown after its purchase by them, on account of other engagement.

No regular enquiry was admittedly held against the workman and he was ordered to be dismissed from service,—vide order copy Exhibit M. W. 3/7, dated 9th September, 1972 only on consideration of the reply Exhibit M. W. 3/3 of the charge-sheet, Exhibit M. W. 3/2 and the reply Exhibit M. W. 3/6 given by him to the show cause notice, Exhibit M. W. 3/5 given to him by the Board of Directors. The management thus while conceding that no proper enquiry had been held against the workman adduced evidence on merits of the charges stated above and the workman made his own statement in rebuttal.

The management examined Shri S. K. Sexena, their Manager-cum-Accountant alone in order to establish their charges stated above and led no other evidence. He admitted that he was not in service of the society in any capacity during the period of transaction relied on by the management for terminating his services and that he made his statement only with reference to the record without any personal knowledge. He only touched charge Nos. 1, 2, 7 and 8 in his deposition and did not say a word in respect of the other charges and in absence of any evidence in support of the same the remaining charges obviously remained unestablished. He stated with reference to the records brought by him that the sale rate of Urea 45 per cent had been fixed at the rate of Rs. 904 per tonne,—vide circular letter, dated 25th January, 1972, Exhibit M. W. 3/8 duly sent to the workman for his information and signatures in token thereof and that he sold 40 K. G. Urea for the consideration of Rs. 40 in violation of the instructions contained in the circular letter duly sent to him for information. He tendered in evidence the copies of the audit objections marked A and B and Exhibit M. W. 3/19 and M. W. 3/20 relating to charges 7 and 8 in respect of the possession of excess Urea Fertilizer by the workman. He gave out that Shri Shiv Charan, workman refunded his security to his brother Nand Kishore,—vide entries made in Kacha Cash book on 3rd March, 1972 contrary to the instructions of the Board of Directors. It is however interesting to note that the entry dated 3rd March, 1972, was not put to the workman in his cross-examination for eliciting his explanation if it was in his hand writing even though the later had denied the allegations that he made payment of the security to Shri Nand Kishore in his examination in chief. Shri S. K. Sexena did not depose that the entry, dated 3rd March, 1972, in the Kacha Cash Book relating to the payment of security to Shri Nand Kishore was in the hand writing of

the workman. He had admittedly no direct knowledge about the payment of the security to Shri Nand Kishore by the workman and the management led to other evidence to support this charge. It is thus clear that even charge No. 2 remained unsubstantiated.

As regards charges Nos. 1, 7 and 8 the workman admitted having charged price of 40 K. G. of Urea in excess of what had been stated in the circular letter within the explanation that it included the sales tax. He also admitted the possession of Urea Fertilizer in excess of what had been shown by him in stock register and explained that it belonged to Sarvshri Bagat Raj Bati and Shankar Singh who had failed to lift the same after it was purchased by them from the society. He adopted his reply Exhibit M. W. 3/3 filed by him before the Board of Directors of the charges Exhibit M.W.3/1, as a part of his statement. He however, failed to substantiate that the price charged by him in excess of what has been stated in the circular letter included the sales tax and that he was authorised to charge the sales tax or that the Urea Fertilizer found in his possession in excess of what had been stated in the record belonged to Bhagat Raj Bati and Shankar Singh. The burden of proving the explanation tendered by him was squarely on the workman and he failed to discharge the same, so much so he took a different stand in his statement made by him before me that he charged the excess price under order given to him verbally by the management. While stating that he did not receive the copy of the circular M. W. 3/8 fixing the price, he had to admit his signatures on the same. The management however led no evidence that the workman sold 30 bags of Urea Fertilizer found in his possession in excess and misappropriated the sale proceed thereof. I thus in absence of proof of the explanation tendered by the workman and having regard to his own admission referred to above hold the charges Nos. 1 and 7 fully established and charge No. 8 partially made out to the extent that the workman was in possession of Fertilizer Urea of 30 bags in excess of what had been shown in the stock register. I hold the other charges unestablished.

It is conceded that the excess price of Rs. 4 charged by the workman of 40 K. G. of Urea was duly deposited by him in the accounts of the society and was not misappropriated. It has already been held by me that the excess Urea found in possession of the workman was not proved to have been either sold or misappropriated by him. The charges Nos. 1, 7 and 8 proved to the extent stated above thus relate to minor irregularities of the workman detected during audit and do not amount to serious misconduct on his part. The irregularity however give rise to an impression that the workman had not been discharging his duties well and made lapses from time to time. It would thus not be just and proper in the circumstances to maintain his dismissal from service particularly when it is not warranted by any rules or by-laws of the society, on the basis of proof of charges Nos. 1, 7 and 8 to the extent stated above. I however deem it just to penalise the workman for the minor irregularities proved to have been committed by him in breach of the condition of his service.

I, therefore, in view of all the facts and the circumstances of the case and having regard to principles of equity justice and good conscience hold that he is entitled to be reinstated with continuity of service but he shall not be entitled to his back wages. I order accordingly and answer the reference while returning the award in these terms.

Dated the 17th September, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1051, dated the 20th September, 1976.

Forwarded (four copies to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947

Dated the 20th September, 1976.

MOHAN LAL JAIN.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9903-4Lab-76/32726.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between, the workmen and the management of M/s Tools India Private Limited, Mathura Road, Faridabad :—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 175 of 1975

between

SHRI BABU RAM, WORKMAN AND THE MANAGEMENT OF M/S TOOLS INDIA
PRIVATE LIMITED, MATHURA ROAD, FARIDABAD.

AWARD

By order No. ID/FD/75/69811, dated 1st December, 1975, the Governor of Haryana, referred the following dispute between the management of M/s Tools India Private Limited, Mathura Road, Faridabad, and its workman Shri Babu Ram to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Babu Ram was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Tribunal in response to the usual notices of the reference sent to them and filed their pleadings.

Whereas the workman alleged that his services had been terminated by the management with effect from 21st June, 1975, without assigning any reason and without holding any enquiry, the management pleaded that he resigned his job voluntarily on 18th June, 1975,—*vide* written resignation which was duly accepted on 19th June, 1975 and that he subsequently joined the services of M/s Remington Rand of India Limited with effect from 23rd June, 1975. The workman controverted the pleas of the management and reiterated the allegations made by him in the claim statement,—*vide*,—rejoinder filed by him with the result that the following issues were framed on pleas of the parties *vide*,—my order, dated 10th May, 1976:—

- (1) Whether the workman resigned his job on 18th June, 1975 and it was accepted by the management on 19th June, 1975?
- (2) If not, whether the termination of services of Shri Babu Ram was justified and in order. If not, to what relief is he entitled?

The only important question requiring determination for disposal of this reference under the circumstances would be, as to whether the workman resigned his job of his own accord or the management terminated his services. The later in order to prove their plea examined Shri J. R. Ratra, time-keeper, M/s Remington Rand India Ltd., M. W. 1 and Shri P. S. Gujral, their manager, as M. W. 2 and closed their evidence. Shri J. R. Ratra deposed with reference to the record brought by him that the workman joined the services of M/s Remington Rand of India Ltd. on 23rd June, 1975,—*vide* an application, dated 13th June, 1975 copy Exhibit M. 2 and that he had supplied the management with a carbon copy of the resignation made by him before M/s Tools India (P) Ltd. Exhibit M. 4, is the original resignation brought by the management of M/s Tools India (P) Ltd., on record showing that it was duly accepted on 19th June, 1975.

Shri P. S. Gujral deposed that the workman resigned his job,—*vide* resignation Exhibit M. 4 which was duly recommended by the Foreman Shri Gurbachan Singh,—*vide* endorsement Exhibit M. 4/1 and that the workman left coming to the factory from 21st June, 1975 after his resignation had been accepted on 19th June, 1975. The evidence, oral and documentary, thus brought by the management on record remained un rebutted inasmuch as the workman did not even make his own statement in rebuttal thereof despite two opportunities being given to him in that connection.

I under the circumstances see no reason to disbelieve the evidence of Shri J. R. Ratra and Shri P. S. Gujral particularly when their statements are found corroborated from the documentary evidence consisting of the admission in writing of the workman himself and the later has not even taken care to make his own statement in rebuttal thereof.

I, therefore, relying on the aforesaid evidence led by the management decide issue No. 1 in their favour while holding that this is not a case of termination of his service by the management and he is not entitled to any relief. I answer the reference while returning the award in these terms.

Dated the 17th September, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1052, dated the 20th September, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 20th September, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9597-4Lab-76/32728.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Somany Pilkington's Ltd., Kassar (Bahadurgarh).

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Application No. 3 of 1976 under section 33-A of the Industrial Disputes Act, 1947

between

SHRI ATTAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S SOMANY PILKINTON'S
LTD., KASSAR (BAHADURGARH)

AWARD

The management has,—*vide* written statement filed by them today taken a preliminary objection that the complaint brought by Shri Attar Singh under section 33-A of the Industrial Disputes Act, 1947, is not maintainable for want of pendency of an industrial dispute in this court or in the court of the Industrial Tribunal.

I have seen the complaint and find no allegation in respect of the pendency of an industrial dispute before the institution of the complaint. The pendency of such an industrial dispute is an essential pre-requisite for institution of complaint under section 33-A of the Industrial Disputes Act.

It is, thus obvious that the complaint does not disclose any cause of action and is liable to be dismissed on this short ground. I, accordingly dismiss this complaint as not maintainable.

Dated the 3rd September, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2081, dated the 13th September 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9878-4Lab-76/32745.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the Management of M/s Sonapat Truck Owner's Union, Sonapat Gur Mandi, Sonapat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 48 1976

between

SHRI UGAR SEN, WORKMAN AND THE MANAGEMENT OF M/S SONEPAT TRUCK
OWNERS' UNION, SONEPAT GUR MANDI, SONEPAT

AWARD

By order No. ID/RK/390-A-76/21522, dated 23rd June, 1976 of the Governor of Haryana, the following dispute between the management of M/s. Sonapat Truck Owners' Union, Sonapat Gur

Mandi, Sonapat and its workman Shri Ugar Sen, referred to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ugar Sen was justified and in order? If not, to what relief is he entitled?

Whereas the workman put in his appearance before me on 9th September, 1976 in response to the usual notices of reference sent to him, the management proposed to absent themselves on that date despite service of such notice on them personally through registered post with the result that *ex parte* proceedings were taken up against them.

The workman in *ex parte* evidence appeared as his own witness and deposed that his services as a booking clerk on wages of Rs 390 per mensem had been terminated on 21st February, 1976 by the management illegally without assigning any reason and without holding any enquiry.

I see reason to disbelieve the statement of the workman particularly when the proceedings against the management are *ex parte* and they have not taken care to defend the demand raised on them by the former.

I, thus, relying on the statement of the workman, hold that the termination of his services by the management with effect from 21st January, 1976, is unjustified and he is entitled to be reinstated with continuity of service and full back wages. I answer the reference while returning the award in these terms.

Dated, the 13th September, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2114, dated the 20th September, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9905-4Lab-76/32747.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Haryana Paper Mills, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 121 of 1975

between

SHRI GURBAX SINGH, WORKMAN AND THE MANAGEMENT OF M/S HARYANA
PAPER MILLS, FARIDABAD

AWARD

By order No. ID/FD/75/51261, dated 22nd July, 1975, the Governor of Haryana referred the following dispute between the management of M/s Haryana Paper Mills, Faridabad and its workman Shri Gurbax Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Gurbax Singh was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

Whereas the workman alleged, — *vide* claim statement filed by him that his services had been terminated by the management with effect from 23rd January, 1975 illegally without assigning any reason and without holding any enquiry, the management pleading that he absented himself from duty that date and continued to do so till 28th February, 1975 when his name was struck off the rolls as a result of his long continued absence. They stated that they sent a letter to the workman asking him to attend his duty and the letter was received undelivered.

The following issues were thus framed on pleas of the parties, — *vide* my order, dated 26th December, 1975 :—

- (1) Whether the workman absented himself from duty voluntarily with effect from 23rd January, 1975 and continued to do so till 28th February, 1975?
- (2) Whether the termination of services of Shri Gurbax Singh was justified and in order ?
If not, to what relief is he entitled ?

The only question requiring determination under the circumstances would be as to whether the workman absented himself from duty of his own accord with effect from 23rd January, 1975 or the management terminated his services from that date. The management in order to prove their pleas made by them in this connection, examined Shri Mai Chand Gupta their head time keeper M.W. 1 and Shri Balwant Rai Nagia, Labour-cum-Conciliation Officer M.W. 2 and closed their evidence.

Shri Mai Chand Gupta deposed with reference to the register of attendance of the employees of the management, brought by him in court that the workman absented himself from duty with effect from 23rd January, 1975 and continued to do so till 28th February, 1975 and that his name was not carried over to the month of March, 1975 as a result of his long continued absence. He brought on record copy Ex. M-1 of the relevant entries relating to the absence of the workman during the aforesaid period besides the registered envelope Ex. M-3 sent to the workman with a letter copy Ex. M-2, dated 25th January, 1975 asking him to resume his duties. This envelope was admittedly received undelivered with an endorsement of the postal authorities that it bore incomplete address. Shri Balwant Rai Nagia, Labour-cum-Conciliation Officer, Faridabad examined as M.W. 2 stated that the workman approached him in the beginning of June or in the end of May and that he took him to the factory and talked to Shri P. K. Rajgaria who agreed to take him (workman) on duty with continuity of service and without back wages and that the workman insisted for payment of back wages and showed his readiness to join his duties only if back wages were paid to him.

The workman appeared as his own witness and denied having absented himself from duty from 23rd January, 1975 to 28th February, 1975. He gave out that the management on the other hand declined assigning him duties on 23rd January, 1975 and thereafter despite his having approached them for that purpose every day for 4/5 days. He admitted that the address as written on the envelope Ex. M-3 was correct. He further admitted that the management offered him reinstatement with continuity of service without back wages during conciliation proceedings and he refused to accept this offer.

It would thus appear that the case of the management stands corroborated from the admission made by the workman broadly that they offered to reinstate him with continuity of service without back wages and they sent him a letter copy Exhibit M-2 on his correct address on 25th January, 1975 asking him to join duties and intimating him that he had absented himself from duty since 23rd January, 1975 and in case he continued to do so, it shall be presumed that he was not interested in his service and his name shall be struck off the rolls. The management also directed him to report himself for duty immediately and to show cause why disciplinary action should not be taken against him,—*vide* this letter.

In case the intention of the management had been dishonest and they intended to weed out the workman from their service, they would not have normally sent him a letter copy Exhibit M-2 on his correct address and would not have offered to reinstate him with continuity of service after a demand had been raised by him on them. Even otherwise their case in respect of the absence of the workman from 23rd January, 1975 to 28th February, 1975 is found fully corroborated by the documentary evidence consisting of the register of their attendance, copy Exhibit M-1 and there is absolutely no rebuttal on record of the circumstantial and direct overwhelming evidence led by the management and the solitary statement of the workman is not sufficient to rebut that evidence.

Considered from any angle the plea of the management has been fully substantiated and I relying on the testimony of Shri Mai Chand Gupta and the documentary evidence brought by him on record decide issue No. 1 in favour of the management. In view of my findings on issue No. 1, this is obviously not a case of termination of his services by the management and the workman is not entitled to any relief.

I thus answer the reference while returning the award in these terms.

Dated, the 17th September, 1976.

MOHAN LAL JAIN
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1050, dated the 20th September, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 20th September, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 8909-4Lab-76/32718.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of Messrs Artee Minerals, Main Mathura Road, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA.
FARIDABAD

Reference No. 153 of 1973

between

SHRI RAM PIYARE, WORKMAN AND THE MANAGEMENT OF MESSRS ARTEE MINERALS.
MAIN MATHURA ROAD, FARIDABAD

AWARD

This award shall dispose of Reference Nos. 153 to 161 all of 1973 as common questions of facts and law are involved therein, and the same were consolidated,—*vide* order, dated 22nd April, 1974 with consent of the parties on that ground.

The Governor of Haryana referred the following disputes separately for adjudication by this Tribunal in exercise of the powers conferred by him by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Ram Piyare/Ram Sajiwan/Ram Dev/Bindhashwari Parshad/Ram Bharose/Mohammad Yukub/Ram Dulare/Jammuna Parshad/Ram Dhani is justified and in order? If not, to what relief are they entitled?

The parties put in their appearance in each reference in response to the usual notices of reference sent to them and filed their pleadings.

The workman concerned in each reference alleged that his services were illegally terminated by the management on 23rd April, 1973 after their workmen had served a notice of demands on them in respect of their grievances.

The management pleaded,—*vide* written statement filed by them, in each case, that each workman on 23rd April, 1973 joined an illegal strike during the pendency of a general notice of demands before the Conciliation Officer and whereas the temporary services of Shri Ram Piyara, Ram Dev, Bindhashwari Parshad and Jammuna Parshad were terminated the same day, the services of the other workmen Sarvshri Ram Dhani, Ram Dulare, Mohd. Yaqub, Ram Bharose, and Ram Sajeevan, workmen were terminated on 28th April, 1973. The management raised a preliminary objection that the reference was bad for want of service on them of a notice of demands directly and its rejection by them before the matter was taken to the Conciliation Officer. The following issues were thus framed on pleas of the parties,—*vide* order, dated 24th May, 1974 :—

- (1) Whether the demands the subject-matter of the present reference was first raised by the management and rejected by it before taking up the matter for conciliation? If not, with what effect? (on workman)

(2) Whether it is a case of self-abandonment of service by the workman concerned ?

(3) Whether the termination of services of Shri Ram Piyare is justified and in order ? If not, to what relief is he entitled ?

I have heard the learned authorised representatives for the parties and seen the record. I decide the issues as under :—

Issue No. 1.— The management did not press the pleas covered by this issue in view of my findings made,— vide order dated 10th October, 1975, in reference Shri S.C. Sethi versus Messrs Kirlosker Oil Engine, Mathura Road, Faridabad, that it was no longer necessary for the workman to raise a demand directly on the management and for the later to reject it before the matter was taken to the Conciliation Officer, in order to constitute an industrial dispute, I, therefore, decide this issue against the management.

Issue No. 2.— This is an important issue on facts and on its decision depends the result of the reference. It would appear from the pleas of the parties stated above that whereas each of the workman alleged that the management terminated his services on 23rd April, 1973, illegally, the management all along pleaded that each one of them joined an illegal strike on 23rd April, 1973, and that whereas the services of 4 workmen were terminated on the same day, the services of other 5 workmen were terminated on 28th March, 1973.

Shri J.K. Bharti, Managing Partner of Messrs Artee Minerals, Mathura Road, Faridabad, the only witness examined by the concerned management deposed as under :—

“Shri Ram Piyara workman, was appointed on 1st February, 1973. The wages last drawn by him were @ Rs 105 per mensem. He was appointed as a helper. Shri Ram Saijwan workman, was appointed as a helper on 18th January, 1971. The wages last drawn by him were at Rs 115 per mensem.

Shri Ram Dev, workman, was appointed as a helper on 16th March, 1973. The wages last drawn by him were @ Rs 105 per mensem.

Shri Bindeshwari Parshad, workman, was appointed as a helper on 25th October, 1972. The wages last drawn by him were @ Rs 110 per mensem.

Shri Ram Bharose, workman, was appointed as helper on 4th June, 1970. The wages last drawn by him were @ Rs 120 per mensem.

Mohamed Yakub, workman, was appointed as a helper on 21st June, 1970. The wages last drawn by him were @ Rs 115 per mensem.

Ram Dulare, workman, was appointed as a helper on 4th June, 1970. The wages last drawn by him were at the rate of Rs 120 per mensem.

Shri Yamuna Parshad, workman, was appointed as a helper on 5th February, 1973. The wages last drawn by him were at the rate of Rs 105 per mensem.

Shri Ram Dhani, workman, was appointed as a helper on 19th November, 1970. The wages last drawn by him were @ Rs 120 per mensem.

The workmen served a notice of demand Ex. M-1 on our management. All our workmen resorted to illegal strike with effect from 23rd April, 1973, during the pendency of Conciliation proceedings relating to notice of demands Ex. M-1. We affixed notice Ex. M-2 on the notice board and sent a copy thereof to the Labour Officer. The Labour Officer asked the workmen verbally to join their duties but they declined to do so.

The management terminated the services of casual workers Sarvshri Ram Dev, Yamuna Parshad, Ram Piyare, and Bindeshwari Parshad. Their services were purely on casual basis. Sarvshri Ram Bharose, Ram Dulare, Ram Sajeewan, Ram Dhani and Mohamed Yakub, workmen, gave the lead to the other workmen and threatened the members of our staff, truck drivers, the members of the management etc. with dire consequences in case they entered the premises of the factory. They actually man-handled Shri Giani, our truck driver at the time of his entering the premises of the factory.

I approached the S.D.M., Ballabgarh, on the morning of 24th April, 1973, and submitted before him an application Ex. M-3 (copy) which bears my signatures. The S.D.M. was pleased to depute police personnel at the main entrance of our factory.

The workmen voluntarily ended the strike on 28th April, 1973, when they resumed their work. We were prepared and ready to take all permanent employees on duty on 28th April, 1973. We offered them duties even during the conciliation proceedings relating to their demand for reinstatement. They did not agree to come back on duty. I tender in evidence the copies of the reports of the Conciliation Officer Ex. M-4 to M-13 received by us from him. Each one of these reports bears the signatures of Shri M.L. Malik the then Conciliation Officer.

We verbally called for an explanation of the workmen of their absence from duty, during the strike period. Some of the workmen filed their explanations in writing. These explanations are Ex. M-14 to Ex. M-21.

Sarvshri Mohamed Yakub, Ram Sajeewan, Ram Dulare, Ram Bharose and Bindeshwari Parshad approached the management after the reference was made for a settlement. They in fact wanted their dues admissible to them for the period of their service with us, as all of them had joined other concerns. We replied that the payments could be made only after the decision of the reference by the Court.

He admitted in cross-examination that the management received letter copy Ex. W-1 along with the copy of the complaint Ex. W-1/A from the Conciliation Officer and that they sent their representative to the office of the later on 26th April, 1973, the date of hearing fixed in the complaint. He gave out that he did not remember if the Labour Inspector came to the factory during conciliation proceedings of the case and the question of his telling him that he was not prepared to take the workmen on duty did not arise. He admitted that he did not lodge a complaint in the police relating to the manhandling of his truck driver by the management.

As against the aforesaid statement of Shri J.K. Bhartia, the workman examined Shri Adarsh Kishore Sharma their authorised representative and Shri Raghbir Singh Walia, Head Clerk of the office of the Labour cum-Conciliation Officer, Faridabad, besides Shri Ram Piara and Ram Bharose, workmen. Sarvshri Ram Piara and Ram Bharose deposed that the management locked the concerned workmen out and declined to take them on duty on 23rd April, 1973. Shri Adarsh Kishore gave out that on being told on 23rd April, 1973, by Shri Ram Bharose, workman, that the management had locked the workman out, he made a complaint copy Ex. W-1/A to the Labour Inspector, Faridabad, and another complaint Ex. W.W.4/A to the Labour Officer and had sent a telegram copy Ex. W.W.4/B to the Labour Commissioner, Haryana, Chandigarh. He added that the Conciliation Officer fixed 26th April, 1973, as the date of hearing of his complaint and issued a notice to the management and that the later having agreed to take the workmen concerned on duty, before the Conciliation Officer, they actually declined to do so in the presence of the Labour Inspector sent by the Conciliation Officer to the factory to ask them to take the workmen on duty. This is all the evidence led by the parties.

The case put forth by the workmen is found fully supported by the documentary evidence consisting of the copies of the reports of the Conciliation Officer, Ex. M-5 to M-13 brought on record by the management themselves indicating that the later agreed to take all the workmen concerned on duty on 30th May, 1973, and subsequently declined to do so on 18th June, 1973, the next date of hearing fixed in the case. This conclusion is found further supported from the copy of the report Ex. W-1/AA dated 7th June, 1973, of Shri O.D. Sharma, Labour Inspector, that he in compliance with the orders of the Conciliation Officer dated 4th June, 1973, went to the factory on 6th June, 1973, at 9 A.M. in order to get an amicable mutual settlement between the parties implemented and that the management flatly declined to implement the settlement by way of declining to take the workmen concerned on duty, and that they told him that they never agreed to do so before the Conciliation Officer and would charge-sheet them and hold an enquiry against them. It would appear that the copies of the reports of the Conciliation Officer Ex. M-5 to M-13 and the report of the Labour Inspector Ex. W-1/AA referred to above well belie the story now put forth by Shri J.K. Bhartia that the workman concerned did not agree to come back on duty. A further statement made by Shri J.K. Bhartia that he did not remember if Labour Inspector came to the factory during conciliation proceedings, led to a conclusion of his half hearted admission of the Labour Inspector having gone there and made a report. The contention of Shri S.L. Gupta that the copy of the report Ex. W-1/AA brought forth on record by Shri Raghbir Singh Walia Head Clerk of the office of the Conciliation Officer, was not admissible in evidence without examination of the Labour Inspector has no merit in view of his having no objection at the time of admission of this copy in evidence. Even otherwise provisions of the Indian Evidence Act strictly do not apply to proceeding under the Industrial Disputes Act and having regard to the want of objection of the management at the proper stage in respect of admission of this document in evidence, it does not now lie in their mouth to object to its admissibility during arguments. It can not be believed that the Conciliation Officer and the Labour Inspector joined heads in order to prepare false documents for harming the management. It would be further interesting to note that the copies of the report of the Conciliation Officer Ex. M-5 to M-13 indicating the refusal of the management to take the workmen on duty on 18th June, 1973, in compliance with their agreement dated 30th May, 1973, to do so were brought by the management themselves on record and the same well support the report of the Labour Inspector copy Ex. W-1/AA.

Taking the statement of Shri J.K. Bhartia that the management affixed notice Ex. M-2 on the notice board informing the workmen concerned on 23rd April, 1973, that they had resorted to illegal strike and asking them to join duty within two hours and that they sent a copy of this notice to the Conciliation Officer is found rebutted by the testimony of Shri Raghbir Singh Walia that a copy of such a notice was not contained in the file relating to Messrs Artee Mineral, Faridabad, brought by him in Court. Shri J.K. Bhartia admitted that no report

was lodged in the police in respect of the man-handling of the employees of the management by the workmen. There was no corroboration on record of his statement that a complaint copy Ex. M-3 was made to S.D.M., Ballabgarh, on 24th April, 1973. Even otherwise the aforesaid notice and the complaint copies M-2 and M-3 were brought on record for the first time on 10th June, 1976, when Shri J.K. Bhartia made his statement and were not referred to or relied upon earlier. It was no longer necessary for each one of the workman to come into the witness box and depose to the fact that he was locked out of the factory by the management, particularly when all these cases had been consolidated with the consent of the parties and two of the workmen and Shri Adarsh Kishore authorised representative for the workmen supported the demand raised on the management. All these circumstances, well lead to a conclusion of the falsity of the statement of Shri J.K. Bhartia and lead to a conclusion beyond doubt that the story put forth by the management is false and fabricated and that they terminated the services of the workmen on 23rd April, 1973, without assigning any reason and the later did not resort to strike. It would not be improper to reiterate that the management declined to take the workmen on duty even after having agreed to do so, before the Conciliation Officer on 30th May, 1973 and taken from any angle, the burden of this issue so heavily placed on the management remained undischarged and they miserably failed to establish their case covered by this issue.

The result is that the termination of the concerned workmen is unjustified and each one of them is entitled to reinstatement with continuity of service and full back wages. I hold accordingly and answer these reference while returning this award with these findings.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 27th August, 1976.

No. 1007, dated the 27th August, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9776-4Lab-76/32730.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Escorts Limited, Plant-I, Faridabad:—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 84 of 1970

Between

SHRI HARBANS LAL CHOPRA WORKMAN AND THE MANAGEMENT OF M/S ESCORTS
LIMITED, PLANT-I, FARIDABAD

AWARD

By order No. ID/FD/205-I/68/26921-25, dated 14th October, 1968, the Governor of Haryana referred the following dispute between the management of M/s Escorts Limited, Plant-I, Faridabad, for adjudication to this Court, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :

“Whether the termination of services of Shri Harbans Lal Chopra was justified and in order ? If not to what relief is he entitled ?”

The High Court held the appointment of the then Presiding Officer, Labour Court, as illegal and the dispute was re-referred to another Labour Court in the year 1970.

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The services of the workman were admittedly terminated on the following charges being established against him. He was in this connection served with a charge-sheet dated 25th May, 1968 :—

“That in your letter dated 23rd May, 1968, addressed to the Enquiry Officer with a copy endorsed to us you have used highly defamatory, derogatory and objectionable language against Mr. S.S. Bajaj, Engineer and against the management in the following terms :—

“That I hope, you have noted that it is Shri S.S. Bajaj who is indecently active in the matter. It is he who is the prosecutor and complainant—he is a witness at every place and time. The witnesses he produced did not hear him out and in fact their statements made him appear in a lurid light as a person conceiving false charges mala fide. I hope the management will also take note of the fact that Shri Bajaj is an unscrupulous liar and if the management will take action against him, unless they wink, connive at and abet his unscrupulous and victimisation activities.”

The letter dated 23rd May, 1968, the basis of the charge was admittedly written by the workman to the Enquiry Officer Shri K.S. Jain during the pendency of an enquiry against him on the charges of his being found absent from the place of his duty and indulged in gossiping with Shri Aytar Singh, foreman, on 19th February, 1968. Shri S.S. Bajaj was alleged to have seen him sitting idle and gossiping with the foreman and was as such the main witness in this enquiry arising from the charge-sheet dated 27th February, 1968.

The workman alleged, — *vide* claim statement filed by him that the charge-sheet dated 27th February, 1968, had been framed and served on him at the instance of Shri S.S. Bajaj and he had a right to defend himself in the matter of this charge-sheet and the letter dated 23rd May, 1968, did not constitute a misconduct. He stated that Shri S.S. Bajaj was not even examined during the enquiry relating to the charge-sheet, dated 25th May, 1968 and findings of the Enquiry Officer holding the charges established and the same constituting a mis-conduct were perverse and his dismissal was illegal. He finally contested his dismissal from services on the ground that Shri S.C. Vohra, Personnel Officer, dismissing him from services, was not competent authority to do so.

The management while stating the history of the services of Shri Harbans Lal Chopra, workman and the instances of his mis-behaviour and negligence exhibited by him and the warnings administered to him from time to time, with which we are not concerned in this reference arising from the termination of his services on the charge-sheet dated 25th May, 1968, pleaded,— *vide* written statement filed by them that the letter dated 23rd May, 1968, amounted to indecent behaviour and an act subversive of discipline and as such constituted a mis-conduct under Standing Order No. 21 of their Certified Standing Orders and the charges dated 25th May, 1968, were fully established. They further stated that the reference was bad in law on the ground that the claim statement had not been filed by a competent person and there was no industrial dispute between the parties. They pleaded that the reference was first made to Shri P. N. Thukral whose appointment as Presiding Officer, Labour Court, Haryana, had been held as illegal and thereafter to Shri O. P. Sharma appointed as Presiding Officer, Labour Court, Haryana, after the Haryana Government had filed a Letters Patent Appeal against the orders of the High Court holding the appointment of Shri P. N. Thukral as illegal.

The workman reiterated the allegations made by him in the claim statement and controverted the pleas of the management,— *vide* rejoinder filed by him with the result that the following issues were framed on pleas of the parties,— *vide* order dated 25th September, 1970 :—

- (1) Whether there is no industrial dispute between the workman and the management as contemplated under the Industrial Disputes Act, 1947 ?
- (2) Whether the present reference is bad in law for the reasons given in the written statement ?
- (3) Whether the statement of claim in the case has been filed by an authorised person ? If so, with what effect ?
- (4) Whether the termination of services of Shri Harbans Lal was justified and in order ? If not, to what relief is he entitled ?

I have heard learned authorised representatives for the parties with reference to the evidence led by them and seen the record. I decide the issues as under :—

Issue No. 1 to 3.—The pleas covered by these issues were not pressed by the management during arguments and as such I decide these issues against the management.

Issue No. 4.—This is an important issue in the case and in view of the admitted facts of the case has to be decided with reference to the law on the subject. For instance it stands admitted on both sides, that the workman wrote a letter, dated 23rd May, 1968, to the Enquiry Officer Shri K.S. Jain during the pendency of an enquiry held against him on charges dated 27th February, 1968, and the same constituted as the basis of the charge-sheet dated 25th May, 1968, resulting in the termination of his services. It is further conceded on both sides, that Shri S.S. Bajaj was the main witness in the enquiry held against the workman on the charges dated 27th February, 1968, and he was not examined as a witness in the enquiry held on the charges dated 25th May, 1968.

The most important question requiring determination under the circumstances would be as to how far the findings of the Enquiry Officer dated 25th June, 1968 holding the charges, dated 25th May, 1968 established without examination of Shri S.S. Bajaj could be said to be proper and legal. I have carefully gone through the report of the Enquiry Officer, dated 25th June, 1968 and find that the Enquiry Officer held the charges dated 25th May, 1968 proved only on the ground that the workman had failed to substantiate the correctness of the allegations made by him against Shri S.S. Bajaj in his letter dated 23rd May, 1968 and that the burden of proof of establishing these allegations was on him. This approach of the Enquiry Officer is against all canons of jurisprudence whereby it is well settled that the burden of proving charges always lies on the management and they have to establish their case by cogent, reliable and material evidence. If the management in the instant case wanted to prove that the allegations made by the workman against Shri S.S. Bajaj, their Engineer in respect of his being a false witness and an unscrupulous liar were incorrect, they must have at least examined Shri S.S. Bajaj and their withholding such an important material witness renders the findings of the Enquiry Officer vitiated. I am at a loss to understand as to how could the charge dated 25th May, 1968 be held to be established until Shri S.S. Bajaj came in the witness-box and denied the allegations made against him, while giving full opportunity to the workman to cross-examine him, in order to show that he was in fact an unscrupulous liar. I thus while being in agreement with the authorised representative of the workman hold that the findings of the Enquiry Officer dated 25th June, 1968 made as a result of a wrong approach of the principles of law in respect of the burden of proof, are perverse, liable to be vitiated and struck down.

I have carefully read the letter, dated 23rd May, 1968 admittedly sent to the Enquiry Officer by the workman during the pendency of the enquiry on charges dated 27th February, 1968 and find that the workman dubbed Shri S.S. Bajaj admittedly a principal witness against him in the enquiry held against him on charges, dated 27th February, 1968 as a false witness and an unscrupulous liar always ready to support the management and as such a prosecutor and the complainant. A question requiring determination under the circumstances would be as to how such allegations made in respect of a principal witness by a person facing enquiry while standing in the dock amount to an indecent behaviour and as such a misconduct. The answer should in my opinion be in the negative, as a defendant, an accused and a workman facing enquiry have always a right to defend themselves and represent while doing so before the authority holding a trial or an enquiry, that a particular witness appearing against him was false and a liar besides being instrumental in his or her prosecution, even though he or she may ultimately be not able to prove such a plea and the same may even be subsequently established as incorrect.

Shri B.R. Ghai, authorised representative for the management in this connection submitted "1957—Labour Appeal Cases—15 between M/s The Agarpara Jute Mills, Agarpara *versus* Shri Sukdeo Roy, E.B. No. 129, Durwan", "1961—II—LLJ—686 between Calcutta Jute Manufacturing Company Ltd., and Calcutta Jute Manufacturing Workers Union", "1954—Labour Appeal Cases—825 between Lever Brothers (India) Limited, Scindia House, Ballard Estate, Bombay-1, and Bhagwati Prasad Manna Kalwar", "1955—Labour Appeal Cases 795 between Shri Kashinath Das and Messrs Ispahani Ltd., Calcutta", A.I.R. 1956 Orissa 99 (Orissa High Court) between Panigrahi, C.J. and P.V.B. Rao, J.—V.V. Kameswar Rao, Petitioner *versus* State of Orissa, Opposite party," and "1948-49—Industrial Court Reporter 266 between Walchandnagar Industries Ltd., Walchandnagar, District Poona *versus* Workmen Employed under it", in support of his contention that the allegations made by the workman in his letter dated 23rd May, 1968 against Shri S.S. Bajaj amounted to misconduct.

The authority reported as "1957—Labour Appeal Cases—15", relates to a false complaint made by the workman against the management in a Police Station with the allegations that the later appointed persons to keep up quarrels to oppress and assault. "1955—Labour Appeal Cases—796" relates to a case wherein the workman deposed for the union as a witness that he prepared false accounts on the instructions of the management and the Tribunal found that this statement was made by him falsely with a view to advance the cause of the union and to bring discredit to the Company and injure its reputation. It was held in A.I.R. 1956 (Orissa) 99 by the Orissa High Court that a Collector had jurisdiction to take action against his subordinate for indiscipline and misconduct of his having made unwarranted and irrelevant allegations against him in the grounds of appeal preferred to the Revenue Board. Their Lordships of the Supreme Court held in 1961—II—L.L.J. page 686 that in subordination included defamation of person in authority whether they be direct superiors of the workman or not and that abusive filthy language used by a workman to a superior amounted to such a misconduct. 1954—Labour Appeal Cases—825 related to the facts of a case involving theft of a bicycle and the absence from duty by a workman. It would, thus, appear that none of these authorities is in point and relevant to the facts of the instant case which admittedly relates to a defence put forth by the workman concerned in the earlier enquiry that the complainant was a false witness and an unscrupulous liar. I have, thus, no hesitation in holding that none of these authorities has any application to the facts of the case under decision.

1948—Industrial Court Reporter—266, a case decided by Industrial Tribunal, Bombay with the observations made at page 279 that the statement of the workman that the deposition of a witness appearing against him was false and that the evidence was being concocted against him by the witness in league with his subordinates, in defence in an enquiry against him, amounted to willful in subordination, however, seems to be identical with the facts of the case under decision, and fully supports the contention of the management that the letter dated 23rd May, 1968 admittedly written by the workman to the Enquiry Officer amounted to misbehaviour or willful in subordination. After having given the matter my careful consideration, I with respect differ from the view of law taken by the learned Industrial Tribunal, Bombay for the reasons stated hereunder :

The workman facing an enquiry has only two options after he is served with a charge-sheet. He can either admit the allegations put against him in the charge-sheet or he has the option to deny the same straight-away. In the later case he has again two alternatives, (1) to put his case mildly while stating only that the charge-sheet was incorrect and the witnesses sought to be examined or actually examined in the preliminary enquiry were making incorrect statements or to put it emphatically while giving out that the charges levelled against him was false and the complainant was an unscrupulous liar. There is nothing in any provision of law debarring the workman from pleading that the complaint made against him was false to the knowledge of the complainant and that he was being victimised. If he were to be debarred from taking such a plea, the enquiry would be liable to be rendered vitiated on this ground only. I do not under the circumstances think that the letter dated 23rd May, 1968 amounted to an indecent behaviour or a willful insubordination. Above all the admitted findings of the Enquiry Officer that the charges dated 27th February, 1968 remained unestablished well substantiate the contention of the learned authorised representative for the workman that the possibility of the pleas taken by the the workman in his letter dated 23rd May, 1968 being correct could not be ruled out.

This brings me to the determination of the last and not the least important plea of the workman, that Shri S.C. Vohra, Personnel Officer was not competent to terminate his services. Reference in this connection may be made to the statement of Shri S.C. Vohra, Personnel Officer of the management examined as M.W. 2 before Shri P.N. Thukral and adopted as evidence by the management even after the dispute had been re-referred to Shri O.P. Sharma. He brought on record the copy Ex. M.W. 2/2 of the general powers of attorney executed in favour of Shri Rajan Pashad Nanda by Mrs. Raj Nanda and Shri Harbans Singh Mehta, Directors of M/s Escorts Limited authorising him to dismiss or discharge the services of the workman and to delegate such powers to any subordinate officer. Such a power of attorney obviously did not authorise Shri S.C. Vohra to terminate the services of the workman, in absence of a delegation in his favour of such powers by Shri Rajan Parshad Nanda, or vesting in him of such powers directly by any of the Directors, particularly when he admitted that no such powers vested in him under the letter of his appointment. I was only in his cross-examination that Shri S.C. Vohra got exhibited the copy Ex. M.W. 2/1 of the delegations of powers allegedly made in his favour of dismissing the workman, by Shri Rajan Nanda, Plant Manager and Shri H.P. Nanda, President. After having read the whole statement of Shri S.C. Vohra, I am not able to understand as to under what circumstances and in what manner was this copy exhibited, when admittedly none of the authors of the original was examined as a witness and even Shri S.C. Vohra failed to depose that the original was executed in his presence. The mere circumstance that the copy was exhibited as M.W. 2/1 does not render it duly proved and taken from any angle it cannot be said to have been proved that S/Shri Rajan Nanda and H.P. Nanda authorised Shri S.C. Vohra to terminate the services of the workman, particularly when the original of Ex. M.W. 2/1 was admittedly a confidential document as stated on its heading and Shri S.C. Vohra could not explain the reasons thereof. I, therefore, hold, in agreement with Shri Madhu Sudan Sharan Cowshish, authorised representative for the workman that Shri S.C. Vohra had no authority to dismiss the workman and the order dated 1st July, 1968 made by him under his signatures dismissing the workman from services is illegal on this ground as well.

Having regard to my findings that the order of dismissal of the workman was made by a person not competent to do so and the letter dated 23rd May, 1968 of the workman, the basis of the charge-sheet did not amount to a misconduct, the question of granting an opportunity to the management to adduce evidence on merits of the charge-sheet does not arise, and the workman is entitled to his reinstatement with continuity of service and full back wages. I thus decide this issue against the management.

I, therefore, answer the reference while returning the award in these terms.

Dated the 15th September, 1976

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2126, dated 17th September, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

P. P. CAPRIHAN,
Commissioner and Secy.